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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,790	09/25/2003	Yoshiyuki Sogawa	F05-155625M/KQK	6408
21254 7590 01/30/2009 MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817				
EXAMINER				
CARTER, AARON W				
ART UNIT		PAPER NUMBER		
2624				
MAIL DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/669,790

**Applicant(s)**

SOGAWA, YOSHIYUKI

**Examiner**

AARON W. CARTER

**Art Unit**

2624

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-8, 10 and 12-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5, 6, 10 and 12-19 is/are rejected.
- 7) ☒ Claim(s) 4 and 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This action is responsive to papers filed on 9/9/08.

***Response to Amendment***

2. In response to applicant's amendment received on 9/9/08, all requested changes to the claims have been entered. Claim 19 has been added. Claim 2 has been cancelled.

***Response to Arguments***

3. Applicant's arguments, see Remarks, filed 9/9/08, with respect to the rejection(s) of claim(s) 1, 8, 10 and 14 under 35 U.S.C. 102(e) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of USPN 5,734,743 to Matsugu et al.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 10 and 14 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. Supreme Court precedent<sup>1</sup> and recent Federal Circuit

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<sup>1</sup> *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

decisions<sup>2</sup> indicate that a statutory “process” under 35 U.S.C. 101 must (1) be tied to a particular machine or apparatus, or (2) transform a particular article to a different state or thing. This is referred to as the “machine or transformation test”, whereby the recitation of a particular machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility (See *Benson*, 409 U.S. at 71-72), and the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity (See *Flook*, 437 U.S. at 590”). While the instant claim(s) recite a series of steps or acts to be performed, the claim(s) neither transform an article nor positively tie to a particular machine that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

Claims 12, 13 and 15-19 are rejected by the virtue of their dependency upon claims 10 and 14.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 14-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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<sup>2</sup> *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008).

Claim 14 recites the limitation "said area" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claims 15-19 are rejected by the virtue of their dependency upon claim 14.

***Claim Objections***

6. Claims 8 and 14 are objected to because of the following informalities:

In claim 8, line 6, the phrase "applying weight a factor" appears to be grammatically incorrect.

In claim 8, line 13, the phrase "the weight factor is established at 1 the surrounding region away" appears to be grammatically incorrect.

In claim 14, line 7, the phrase "applying a weighting a factor" appears to be grammatically incorrect.

In claim 14, line 8, the phrase "for said in evaluating said correlation" appears to be grammatically incorrect.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3, 5, 6, 10, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,734,743 to Matsugu et al. (“Matsugu”).

As to claim 1, Matsugu discloses a stereoscopic image processing apparatus for calculating a parallax between a pair of stereographic images, comprising:

Correlation evaluating means for evaluating a correlation of brightness between a first pixel block provided in one of said pair of stereographic images and a second pixel block provided in the other of said pair of stereographic images (*Fig. 1, element S9 and column 5, lines 12-65*); and

Region size changing means for changing a size of said first and second pixel blocks for said correlation evaluating means (*Fig. 1, elements S4-S8 and column 4, lines 43-67, wherein the pixel block size is adjusted before being sent to the correlation evaluating means in element S9*),

Wherein a size of said first and second pixel blocks is changed in accordance an area where said first pixel block is located in the respective pair of images (*Fig. 1, elements S4-S8, column 4, lines 43-67, Fig. 6a-6c and column 6, lines 7-34*).

As to claim 3, Matsugu discloses the stereographic image processing apparatus according to claim 1, further comprising a boundary determining section, the boundary determining section being configured to divide the stereographic images into two areas, an upper area and a lower area, defined by a horizontal boundary line (*Fig. 1, element S4 and Fig. 6b*).

As to claim 5, Matsugu discloses the stereographic image processing apparatus according to claim 1, wherein said area of the stereographic images is divided into a plurality of areas and a size of said first and second pixel blocks is changed to a respective specified size of said first pixel block in accordance with said respective areas where said first pixel block is located (*Fig. 1, elements S4-S8, column 4, lines 43-67, Fig. 6a-6c and column 6, lines 7-34*).

As to claim 6, Matsugu discloses the stereographic image processing apparatus according to claim 1, wherein said first and second pixel blocks have a first size and a second size, the second size being larger than said first size (*Fig. 1, elements S4-S8, column 4, lines 43-67, Fig. 6a-6c and column 6, lines 7-34*).

As to claim 10, please refer to the rejection of claim 1 above.

As to claim 12, please refer to the rejection of claim 3 above.

As to claim 13, please refer to the rejection of claim 5 above.

***Allowable Subject Matter***

8. Claims 4 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claim 8 is allowed.

10. The following is an examiner's statement of reasons for allowance:

As to claim 8, please refer to the Applicant's remarks, page 12, filed on 9/9/08 for the reasons of allowance.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON W. CARTER whose telephone number is (571)272-7445. The examiner can normally be reached on 8am - 4:30 am (Mon. - Fri.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Werner can be reached on (571) 272-7401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aaron W Carter/  
Primary Examiner, Art Unit 2624